

INTERNAL USE ONLY

ER 61-216

10 Jan 61

7 January 1961

MEMORANDUM FOR: Director of Central Intelligence

SUBJECT: U-2 Flights Under International Law

1. This memorandum is for information only.
2. At Friday's meeting with the House Appropriations Committee, the Chairman, Mr. Cannon, raised the question of whether the U-2 flights were a violation of international law. Mr. Taber also raised the question of Russian spies being in violation of international law and suggested that the spies and the U-2 were essentially the same under international law.
3. We have searched thoroughly the authorities on this subject and have found no support under international law concepts that either espionage or the U-2 flights were violations of international law. The authorities recognize the existence of the fact of espionage and Oppenheim states that it is neither illegal, immoral nor violative of international law. There is serious question of whether or not the U-2 flights can appropriately be classified as espionage under general concepts since it does not fit the definitions utilized.
4. The Chicago Convention of 1944 defined among the signatory nations the matter of sovereignty over air space. However, the Soviet Union is not a signatory to that Convention and thus cannot derive its benefits. As far as we have determined the question of sovereignty of air space is not settled under international law except to the extent set forth in the Chicago Convention.

5. We know of no authorities who have discussed the U-2 flight who have characterized it as a violation of international law except the Soviets. On the contrary, as you are aware, Arthur Dean has argued against this position. In addition, [redacted] has prepared a legal opinion in which he argues that the U-2 flight was not espionage and, further, was not a violation of international law. For information we have attached five articles on this subject:

- a. CIA prepared brief done shortly after 1 May 1961;
- b. Arthur Dean article in the NEW YORK TIMES, 25 October 1960;

- [redacted]
- d. Article delivered by Spencer Beresford, special counsel to the House Committee on Science and Astronautics before the annual meeting of International Astronautical Federation at Stockholm, Sweden, on 16 August 1960; and
 - e. Remarks of George J. Feldman at the International Astronautical Federation, Stockholm, Sweden, on 16 August 1960.

6. The fact that the United States acknowledged the U-2 flight of 1 May brings the incident under international law into new concepts since most writers on the subject have not treated the matter of acknowledged agents and certainly there are no treaties concerning acknowledged agents. In summary, it can be seriously debated that the U-2 flights were not espionage in the accepted sense. From our analysis we do not believe the U-2 flights were a violation of international law nor have we found any serious students of international law who have asserted it was a violation.

[redacted]
JOHN S. WARNER
Deputy General Counsel

Atts. 5

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MEMORANDUM FOR: THE DIRECTOR

At yesterday's meeting with Mr. Cannon, the question was raised of U-2 flights under international law. I have attached a brief memorandum on this highlighting the points raised in various detailed briefs attached, all of which conclude that the U-2 flights were not violative of international law.

JOHN S. WARNER
Deputy General Counsel

7 January 1961
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